

FILED ELECTRONICALLY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DARLA ELLIS,	:	
Plaintiff	:	No.: 1:05-CV-02466-YK
v.	:	Filed Electronically
HARRISBURG AREA COMMUNITY	:	
COLLEGE; THOMAS DICK, individually	:	Honorable Yvette Kane
And in his capacity as Director of Student	:	
Account and Cashiering for Harrisburg	:	
Area Community College; MEREDITH	:	
TULLI, individually and in her capacity as	:	
Human Resources Director for Harrisburg	:	
Area Community College; and BARBARA	:	
L. HUTCHINSON, individually and in her	:	
Capacity as Controller for Harrisburg Area	:	
Community College	:	
Defendants	:	

**DEFENDANTS HARRISBURG AREA COMMUNITY COLLEGE,
THOMAS DICK, MEREDITH TULLI AND
BARBARA L. HUTCHINSON'S**

MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants Harrisburg Area Community College ("HACC"), Thomas Dick, Meredith Tulli and Barbara L. Hutchinson, hereby move for partial Summary Judgment, pursuant to F.R.C.P. 56 and Local Rule 56.1, and in support thereof state the following:

1. Darla Ellis initially filed a Complaint with the Pennsylvania Human Relations Commission ("PHRC") on or about January 15, 2003 under Docket No. 2002-06111 against Harrisburg Area Community College ("HACC") alleging race discrimination. The Complaint was simultaneously filed with the Equal Employment Opportunity Commission ("EEOC") under Charge No. 17FA361611. On or about May 21, 2003, the PHRC issued a finding of no probable cause concerning the allegations in the Complaint.

2. Darla Ellis filed a second Complaint with the PHRC on February 13, 2004 under Docket No. 2003-04841 against HACC, Thomas Dick, Meredith Tulli and Barbara L. Hutchinson alleging race discrimination. The Complaint was simultaneously filed with the EEOC under Charge No. 17FA462008. On or about December 19, 2005, the PHRC administratively closed its file concerning the second Complaint.

3. The within judicial action was instituted by the filing of a Complaint on behalf of Darla Ellis as Plaintiff on or about November 28, 2005. An Answer

with Affirmative Defenses to Plaintiff's Complaint was filed on behalf of Defendants HACC, Thomas Dick, Meredith Tulli and Barbara Hutchinson on February 2, 2006.

4. The Court entered a Case Management Order on March 17, 2006. Pursuant to the Court's March 17, 2006 Order, discovery in this matter was to close on August 1, 2006. By Order entered on June 30, 2006, discovery was extended to October 2, 2006.

5. Pursuant to the Court's March 17, 2006 Order, all dispositive motions and supporting briefs are due not later than October 12, 2006. The deadline for filing dispositive motions and briefs was extended to November 1, 2006 by Order entered on October 10, 2006. Accordingly, Defendants' Motion for Partial Summary Judgment is timely.

6. Plaintiff, who was previously employed as an accounting clerk by HACC, sets forth in her Complaint myriad claims against the several Defendants alleging race discrimination, hostile work environment, adverse actions and retaliatory conduct under a litany of legal theories relating to the eventual termination of her employment on or about August 25, 2003. In particular, Plaintiff claims, inter alia, that Defendants' alleged conduct is violative of the Fourteenth Amendment to the United States Constitution; Title VII of the Civil Rights Act of 1964; and the Pennsylvania Human Relations Act.

7. The pleadings in this matter have closed. Defendants have denied the material allegations of Plaintiff's Complaint.

8. The issues raised herein, as set forth below, are ripe for disposition on Summary Judgment:

A. WHETHER ANY AND ALL CLAIMS ASSERTED AGAINST DEFENDANTS MEREDITH TULLI AND BARBARA L. HUTCHINSON MUST BE DISMISSED IN THEIR ENTIRETY, INASMUCH AS PLAINTIFF HAS ACKNOWLEDGED THAT NEITHER INDIVIDUAL DISCRIMINATED OR RETALIATED AGAINST HER IN ANY REGARD?

B. WHETHER ALL ALLEGATIONS THAT ARE BEYOND THE SCOPE OF PLAINTIFF DARLA ELLIS' TWO PENNSYLVANIA HUMAN RELATIONS COMMISSION COMPLAINTS MUST BE STRICKEN AND DISMISSED AS A MATTER OF LAW?

C. WHETHER PLAINTIFF DARLA ELLIS FAILED TO MITIGATE HER DAMAGES BY REFUSING TO TIMELY APPLY FOR A NEW POSITION, WITH HIGHER PAY, THAT WAS MADE AVAILABLE TO HER BY HACC?

9. Moving Defendants aver that each of the foregoing questions can be answered in the affirmative, and the issues in this context resolved in their favor.

WHEREFORE, Moving Defendants respectfully request that this Honorable Court grant their Motion for Partial Summary Judgment, for the reasons more fully set forth in the Brief filed in support of this Motion.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

By: s/SHARON M. O'DONNELL

SHARON M. O'DONNELL, ESQUIRE

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Attorneys for Defendants

Dated: October 16, 2006

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And in his capacity as Director of Student	:	
Account and Cashiering for Harrisburg	:	
Area Community College; MEREDITH	:	
TULLI, individually and in her capacity as	:	
Human Resources Director for Harrisburg	:	
Area Community College; and BARBARA	:	
L. HUTCHINSON, individually and in her	:	
Capacity as Controller for Harrisburg Area	:	
Community College	:	
Defendants	:	

CERTIFICATION OF NON-CONCURRENCE

The undersigned, as counsel for Defendants Harrisburg Area Community College, Thomas Dick, Meredith Tulli and Barbara L. Hutchinson, had sought the

concurrence of Plaintiff, through her counsel concerning, Defendants' Motion for Partial Summary Judgment. Plaintiff does not concur with the Motion.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

By: s/SHARON M. O'DONNELL

SHARON M. O'DONNELL, ESQUIRE
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4200 Crums Mill Road, Suite B
Harrisburg, PA 17112
(717) 651-3503
Attorneys for Defendants

Dated: October 16, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing on all counsel of record via electronic filing on the date set forth below as follows:

Thomas A. Archer, Esquire
Law Offices of Thomas A. Archer
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Harrisburg, PA 17110-0056

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

BY: s/SHARON M. O'DONNELL
SHARON M. O'DONNELL, ESQUIRE

DATE: October 16, 2006